

**SEWARD & KISSEL LLP**

ONE BATTERY PARK PLAZA  
NEW YORK, NEW YORK 10004

WRITER'S DIRECT DIAL:

(212) 574-1448

TELEPHONE: (212) 574-1200  
FACSIMILE: (212) 480-8421  
WWW.SEWKIS.COM

901 K STREET, NW  
WASHINGTON, DC 20001  
TELEPHONE: (202) 737-8833  
FACSIMILE: (202) 737-5184

January 12, 2016

**VIA ECF**

Honorable Valerie E. Caproni  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

*Re: O.W. Bunker-Related Interpleader Actions (See Schedule 1)*

Dear Judge Caproni:

We represent ING Bank N.V., as Security Agent ("ING Bank") in reference to the O.W. Bunker-related interpleader actions (the "Actions") set forth on Schedule 1 (the "Non-Stayed Actions") to this letter. We respectfully update the status of discovery as follows:

The depositions of the corporate representatives of (1) Bonny Gas Transport Ltd. and (2) U.S. Oil Trading LLC took place on January 5 and January 7, 2016, respectively. There are five additional 30(b)(6) depositions presently scheduled through the remainder of the discovery period, as follows:

Deponent	Noticed By	Date/Location
Chemoil Latin America, Inc.	ING Bank	January 14, 2016
Hapag-Lloyd Aktiengesellschaft	ING Bank/O.W. Bunker Germany GmbH	January 19, 2016
Chevron Marine Products, LLC	ING Bank	January 20, 2016
Chemoil Middle East DMCC	ING Bank	January 27, 2016
GPS Chemoil LLC FZC	ING Bank	January 27, 2016

Further, by order dated January 7, 2016, Your Honor ordered that NuStar Terminal Marine Services N.V. ("NuStar") make its witnesses available to be deposed or redeposed upon the request of any other party on or before January 22, 2016 in connection with its Motion for Leave to Amend in the Non-Stayed Action *Bonny Gas Transport Limited v. O.W. Bunker Germany GmbH, et al.*, Case No. 14 Civ. 9542. See ECF No. 111. Also in the *Bonny*

Hon. Valerie E. Caproni  
January 12, 2016  
Page 2

Gas matter, the deposition of non-party Seven Seas Steamship Co., noticed by NuStar and/or NuStar Energy Services, Inc., has been scheduled for January 26, 2016.

Written discovery also continues in the Non-Stayed Actions and has not concluded. A number of parties have exchanged additional requests for discovery based on information obtained during deposition discovery. Many of these requests remain outstanding but ING Bank understands that all parties are endeavoring to respond in due course within the discovery period.

### **OW Germany Extension Request**

*Counsel for OW Germany:* O.W. Bunker Germany GmbH ("OW Germany") respectfully requests that the current discovery deadline in actions 14-cv-9542, 14-cv-9949, 14-cv-10027, and 15-cv-6718 be extended to **February 26, 2016**.

While the parties have made substantial progress in conducting discovery, OW Germany respectfully submits that several factors warrant an additional extension. First, as reported herein, a number of parties, non-parties, and individual witnesses have yet to be deposed, including Hapag-Lloyd AG ("Hapag"), Seven Seas Steamship Co. ("Seven Seas"), O.W. Bunker USA, Inc. ("OW USA"), Norton Lilly International Inc. ("Norton Lilly"), and two former O.W. Germany employees located in Hamburg. The parties have managed to schedule some of these depositions before expiration of the current deadline. However, given (a) the number of parties and attorneys involved, (b) the overlap with other actions and previously scheduled depositions, (c) the location of witnesses and required travel time, and (d) the inevitability of conflicts and prior commitments, it would be exceedingly difficult to schedule, prepare for, and conduct the remainder by January 29, 2016.

Your Honor also has ordered NuStar to "make its witnesses available to be deposed, or redeposed, as the case may be, upon the request of any other party on or before January 22, 2016," as a condition to filing an Amended Answer and Verified Claim in action 14-cv-9542 [Dkt. # 111]. Insofar as this Order may be read to require either (i) the deposition requests to be made or (ii) the depositions to be completed by January 22, 2016, OW Germany seeks clarification of the Order and a corresponding extension of that deadline as well.

Counsel for OW Germany, NuStar, and ING Bank have had a preliminary discussion about Your Honor's Order, and agree that it would not be feasible to schedule and conduct additional depositions of NuStar's witnesses on or before Friday, January 22. The parties in actions 14-cv-9949, 14-cv-10027, and 15-cv-6718 are set to conduct the deposition of Hapag's corporate representative on Tuesday, January 19 (the day after the Martin Luther King, Jr. holiday). In addition, counsel for OW Germany, Hapag, and ING Bank are set to travel to Houston to appear before the Hon. Lynn Hughes in the Southern District of Texas on Thursday, January 21, 2015, for a hearing in two other OW-related actions commenced by NuStar (which Judge Hughes declined to transfer to this Court pursuant to 28 U.S.C. § 1404).

Hon. Valerie E. Caproni  
January 12, 2016  
Page 3

Second, the depositions of various witnesses have revealed the existence of documents that should have been produced in response to prior requests, which therefore need to be made available and reviewed before the completion of depositions and the end of discovery. For example, the corporate representative of O'Rourke Marine Services ("OMS") revealed that OMS possesses undisclosed email communications with OW USA from which OMS culled certain attachments, including bunker delivery notes and invoices. Likewise, the corporate representative of U.S. Oil Trading LLC ("USOT") revealed the existence of a credit file maintained by USOT for O.W. Bunker & Trading A/S ("OW Denmark"). As Your Honor may recall [14-cv-9949, Dkt. # 139 at pp. 3-4], USOT contends that it entered into an agreement with OW Denmark to supply four vessels with bunkers at the Port of Tacoma, Washington—even though (a) USOT only communicated with OW USA and (b) Hapag placed the orders for those bunkers with OW Germany. The documents in the credit file supposedly form the basis for USOT's allegations, but they have not been produced as part of discovery to date. USOT's attorneys have also indicated that they are in possession of documents received from Norton Lilly in response to a Rule 45 non-party subpoena, which have not been provided to the other parties. OW Germany is in the process of preparing formal discovery demands for all of these documents, and therefore seeks an extension in part to ensure that the receiving parties have adequate time to respond under Rule 34.

Third, a trial has been scheduled in another OW Bunker-related matter involving ING Bank for the week after Presidents' Day (Feb. 17 – 19) in the Southern District of Alabama (1:14-cv-00590). OW Germany submits that a shorter extension could potentially create scheduling conflicts with counsel's trial preparation or the actual trial itself.

Accordingly, OW Germany respectfully requests an additional four weeks to schedule and complete discovery in actions 14-cv-9542, 14-cv-9949, 14-cv-10027, and 15-cv-6718 on or before February 26, 2016.

*Counsel for USOT:* USOT learned of O.W. Germany's request at approximately 3:45 p.m. today, and does not see the need for the requested extension in 14-cv-9949 and 15-cv-6718. We do not agree that any further discovery is warranted as O.W. Germany suggests and are prepared to discuss with the Court any of the discovery the parties cannot work out between themselves.

### **Current Schedule**

The current deposition schedule in respect of particular cases is as follows:

(1) *Birch Shipping Ltd. v. O.W. Bunker China Ltd. (HK), et al.*, Case No. 14 Civ. 9282

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Birch Shipping Ltd.	ING Bank	<b>Deposition held December 9, 2015</b>
Chemoil Latin America, Inc.	ING Bank	January 14, 2016

Hon. Valerie E. Caproni  
January 12, 2016  
Page 4

(2) *Clearlake Shipping Pte Ltd v. O.W. Bunker (Switzerland) SA, et al.*, Case No. 14 Civ. 9287

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Clearlake Shipping Pte Ltd.	ING Bank	Deposition held November 6, 2015
NuStar Energy Services, Inc.	ING Bank	Deposition held December 2-3, 2015
ING Bank	NuStar Energy Services, Inc.	Deposition held December 11, 2015
LBH Group	NuStar Energy Services, Inc.	Deposition held December 14, 2015

(3) *Bonny Gas Transport Limited v. O.W. Bunker Germany GmbH, et al.*, Case No. 14 Civ. 9542

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Bonny Gas Transport Ltd.	ING Bank / O.W. Bunker Germany GmbH	Deposition held January 5, 2016
NuStar Terminal Marine Services N.V.	ING Bank / O.W. Bunker Germany GmbH	Deposition held December 2-3, 2015
NuStar Energy Services, Inc.	ING Bank	Deposition held December 2-3, 2015
ING Bank	NuStar Energy Services, Inc.	Deposition held December 11, 2015
Seven Seas Steamship Co.	NuStar Energy Services, Inc. and/or NuStar Terminal Marine Services N.V.	January 26, 2016
NuStar (John Andrew Downs)	O.W. Bunker Germany GmbH	TBD
O.W. Bunker Germany GmbH	NuStar Energy Services, Inc. and/or NuStar Terminal Marine Services N.V.	TBD

(4) *SHV Gas Supply & Risk Management SAS v. O.W. Bunker USA Inc., et al.*, Case No. 14 Civ. 9720

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Exmar Shipping BVBA	ING Bank / NuStar Energy Services, Inc.	Deposition held December 4, 2015
SHV Gas Supply & Risk Management SAS	ING Bank / NuStar Energy Services, Inc.	Deposition held December 4, 2015
NuStar Energy Services, Inc.	ING Bank	Deposition held December 2-3, 2015
ING Bank	NuStar Energy Services, Inc.	Deposition held December 11, 2015

Hon. Valerie E. Caproni  
January 12, 2016  
Page 5

(5) *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC, et al.*, Case No. 14 Civ. 9949

Deponent	Noticed By	Date/Location
Hapag-Lloyd Aktiengesellschaft	ING Bank / O.W. Bunker Germany GmbH	January 19, 2016
U.S. Oil Trading LLC	ING Bank / O.W. Bunker Germany GmbH	<b>Deposition held January 7, 2016</b>
Norton Lilly International, Inc. <sup>1</sup>	U.S. Oil Trading LLC	Adjourned pending production of documents
ING Bank	Hapag-Lloyd	<b>Deposition held December 11, 2015</b>
O.W. Bunker Germany GmbH	Hapag Lloyd	Final date and location to be agreed

(6) *OSG Ship Management, Inc. v. O.W. Bunker USA Inc., et al.*, Case No. 14 Civ. 9973

Deponent	Noticed By	Date/Location
1372 Tanker Corp.	ING Bank	<b>Deposition held December 7, 2015</b>
OSG Ship Management, Inc.	ING Bank	<b>Deposition held December 7, 2015</b>
Chemoil Middle East DMCC	ING Bank	January 27, 2016
GPS Chemoil LLC FZC	ING Bank	January 27, 2016

(7) *Hapag-Lloyd Aktiengesellschaft v. O'Rourke Marine Service L.P., et al.*, Case No. 14 Civ. 10027

Deponent	Noticed By	Date/Location
Hapag-Lloyd Aktiengesellschaft	ING Bank / O.W. Bunker Germany GmbH	January 19, 2016
O'Rourke Marine Services L.P., L.L.P.	ING Bank / O.W. Bunker Germany GmbH	<b>Deposition held December 18, 2015</b>
Angela Dalcour	O.W. Bunker Germany GmbH	Final date and location to be agreed
O.W. Bunker USA, Inc.	O.W. Bunker Germany GmbH	Adjourned <i>sine die</i>
ING Bank	Hapag-Lloyd	<b>Deposition held December 11, 2015</b>
O.W. Bunker Germany GmbH	Hapag Lloyd	Final date and location to be agreed.

<sup>1</sup> Notice of Deposition by subpoena of non-party.

Hon. Valerie E. Caproni  
January 12, 2016  
Page 6

(8) *NYK Bulk & Project Carriers Ltd v. O.W. Bunker USA Inc., et al.*, Case No. 14 Civ. 10090

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Nyk Bulk & Project Carriers Ltd.	ING Bank	<b>Deposition held December 16 and December 21, 2015</b>
NuStar Energy Services, Inc.	ING Bank	<b>Deposition held December 2-3, 2015</b>
ING Bank	NuStar Energy Services, Inc.	<b>Deposition held December 11, 2015</b>

(9) *Nippon Kaisha Line Limited v. O.W. Bunker USA Inc., et al.*, Case No. 14 Civ. 10091

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Nippon Kaisha Line Ltd.	ING Bank	<b>Deposition held December 16 and December 21, 2015</b>
NuStar Energy Services, Inc.	ING Bank	<b>Deposition held December 2-3, 2015</b>
ING Bank	NuStar Energy Services, Inc.	<b>Deposition held December 11, 2015</b>
Inchcape Shipping Services	NuStar Energy Services, Inc.	<b>Deposition held December 9, 2015</b>

(10) *Canpotex Shipping Services Limited v. O.W. Bunkers (UK) Limited, et al.*, Case No. 15 Civ. 1351

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Canpotex Shipping Services Ltd.	ING Bank	<b>Deposition held December 10, 2015</b>
Chevron Marine Products LLC	ING Bank	January 20, 2016

Hon. Valerie E. Caproni  
January 12, 2016  
Page 7

(11) *SK Shipping Co., Ltd. v. NuStar Energy Services, Inc., et al.*, Case No. 15 Civ. 2141

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
SK B&T Pte Ltd.	ING Bank	<b>Deposition held November 11, 2015</b>
SK Shipping Co. Ltd.	ING Bank	<b>Deposition held November 12, 2015</b>
NuStar Energy Services, Inc.	ING Bank	<b>Deposition held December 2-3, 2015</b>
ING Bank	NuStar Energy Services, Inc.	<b>Deposition held December 11, 2015</b>
Wilhelmsen Ship Services	NuStar Energy Services, Inc.	<b>Deposition held December 4, 2015</b>

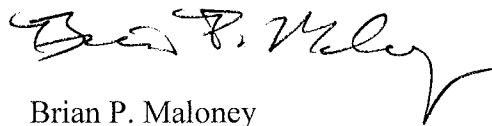
(12) *U.S. Oil Trading L.L.C. v. M/V VIENNA EXPRESS, et al.*, Case No. 15 Civ. 6718

<b>Deponent</b>	<b>Noticed By</b>	<b>Date/Location</b>
Hapag-Lloyd Aktiengesellschaft	ING Bank / O.W. Bunker Germany GmbH	January 19, 2016
U.S. Oil Trading LLC	ING Bank / O.W. Bunker Germany GmbH	<b>Deposition held January 7, 2016</b>
ING Bank	Hapag-Lloyd	<b>Deposition held December 11, 2015</b>
O.W. Bunker Germany GmbH	Hapag Lloyd	Final date and location to be agreed.

\* \* \* \*

The parties to these related actions specifically reserve all rights, claims and defenses, without limitation. Thank you.

Respectfully submitted,



Brian P. Maloney



Schedule 1  
O.W. Bunker-Related Interpleader Matters  
(Non-Stayed Actions)

1. *Birch Shipping Ltd. v. O.W. Bunker China Ltd. (HK), et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9282 (VEC)
2. *Clearlake Shipping Pte Ltd v. O.W. Bunker (Switzerland) SA, et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9287 (VEC)
3. *Bonny Gas Transport Limited v. O.W. Bunker Germany GmbH, et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9542 (VEC)
4. *SHV Gas Supply & Risk Management SAS v. O.W. Bunker USA Inc., et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9720 (VEC)
5. *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC, et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9949 (VEC)
6. *OSG Ship Management, Inc. v. O.W. Bunker USA Inc., et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9973 (VEC)
7. *Hapag-Lloyd Aktiengesellschaft v. O'Rourke Marine Service L.P., et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10027 (VEC)
8. *NYK Bulk & Project Carriers Ltd v. O.W. Bunker USA Inc., et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10090 (VEC)
9. *Nippon Kaisha Line Limited v. O.W. Bunker USA Inc., et al.*  
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10091 (VEC)
10. *Canpotex Shipping Services Limited v. O.W. Bunkers (UK) Limited, et al.*  
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 1351 (VEC)
11. *SK Shipping Co., Ltd. v. NuStar Energy Services, Inc., et al.*  
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 2141 (VEC)
12. *U.S. Oil Trading L.L.C. v. M/V VIENNA EXPRESS, et al.*  
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 6718 (VEC)